

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 10996 OF 2019
IN FIRST APPEAL (STAMP) NO.26238 OF 2019

THE EXECUTIVE ENGINEER, LIFT IRRIGATION
DIVISION, OSMANABAD AND ORS.

VERSUS

GAJARABAI W/O MARUTI KSHIRSAGAR (DIED) THR.
L.RS. PANDURANG MARUTI KSHIRSAGAR

WITH

CIVIL APPLICATION NO. 11003 OF 2019
IN FIRST APPEAL (STAMP) NO.26257 OF 2019

THE EXECUTIVE ENGINEER, LIFT IRRIGATION
DIVISION, OSMANABAD AND ORS.

VERSUS

BABRUWAN YEDA MALI

WITH

CIVIL APPLICATION NO. 11005 OF 2019
IN FIRST APPEAL (STAMP) NO.26252 OF 2019

THE EXECUTIVE ENGINEER, LIFT IRRIGATION
DIVISION, OSMANABAD AND ORS.

VERSUS

RAOSAHEB SAMBHAJI KEDAR

WITH

CIVIL APPLICATION NO. 11001 OF 2019
IN FIRST APPEAL (STAMP) NO.25781 OF 2019

THE EXECUTIVE ENGINEER, LIFT IRRIGATION
DIVISION, OSMANABAD AND ORS.

VERSUS

MARUTI TUKARAM GAIKWAD AND OTHERS

WITH

CIVIL APPLICATION NO. 10998 OF 2019
IN FIRST APPEAL (STAMP) NO.26247 OF 2019

THE EXECUTIVE ENGINEER, LIFT IRRIGATION
DIVISION, OSMANABAD AND ORS.

VERSUS

DINKAR SADASHIV BHADRE
WITH
CIVIL APPLICATION NO. 11007 OF 2019
IN FIRST APPEAL (STAMP) NO.26261 OF 2019

THE EXECUTIVE ENGINEER, LIFT IRRIGATION
DIVISION, OSMANABAD AND ORS.

VERSUS

GENA DAJI GAIKWAD (DIED) THR. L.RS.
SMT.LAXMIBAI W/O GENA GAIKWAD AND ORS.

WITH
CIVIL APPLICATION NO. 10999 OF 2019
IN FIRST APPEAL (STAMP) NO.26241 OF 2019

THE EXECUTIVE ENGINEER, LIFT IRRIGATION
DIVISION, OSMANABAD AND ORS.

VERSUS

PADMAKAR AMBRUSHI SATHE AND ANR

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Mr.S.C. Arora, Advocate for the applicants.

Mr.V.V. Ingale, Advocate for the respondent
no.1.

Mr.A.A. Jagatkar, AGP for the
respondent/State

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CORAM : V.L.ACHLIYA,J.

DATE : 18.01.2021

ORAL ORDER :

The applicants-appellants have moved these applications seeking condonation of delay in filing respective appeals for the reasons set out in detail in the applications.

2. Heard the learned counsel for

the applicants/appellants and counsel representing the respondent/s - claimant/s in respective appeals.

3. In brief, it is the contention of learned counsel for the applicants-appellants that the delay caused in filing appeals was not deliberate and intentional. It was primarily occurred due to considerable time spent in collecting the documents and securing sanction to file appeals from the higher authorities. It is submitted that the appellants have good case to succeed in appeals. The judgment and award passed by the Reference Court is not sustainable in law. It is submitted that no evidence was adduced on the part of the claimants to support the case for enhancement. It is submitted that the Reference Court has enhanced the compensation based upon the decision in L.A.R. No.757/2011. It is submitted that the award passed in L.A.R. No.757/2011 is under challenge before this Court in First Appeal (Stamp) No.26241/2019 along with application seeking condonation of delay.

4. It is submitted the compensation assessed @ Rs.210/- per R by the S.L.A.O. has

been enhanced to Rs.688/- per R by the Reference Court. In that view, the enhancement is about 7 to 8 times the compensation assessed and awarded by the S.L.A.O. It is submitted that the interest has been awarded from the date of notification, which is contrary to the Full Bench decision of this Court in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari*** reported in ***2016(3) Mh.L.J. 457***. In case, the delay is not condoned, the meritorious matters may be rejected for technical reasons. In this background, learned counsel urged to condone the delay.

5. On the other hand, learned counsel for the respondents – claimants opposed the applications with contention that the reasons assigned are not sufficient to condone the delay.

6. On due consideration of submissions advanced in the light of overall facts of the case, the reasons assigned for condonation of delay and challenges raised in the appeals, I am of the view, the delay deserves to be condoned. In case, the delay is condoned, no prejudice would cause to other side as

ultimately the appeals to be decided on merits. On the contrary, if the delay is not condoned, there is every likelihood that the meritorious matter may be rejected for technical reasons.

7. It is not out of place to observe that the judgment and award passed by the Reference Court reflects casual approach as well as understanding of law on the part of the learned Judge of the Reference Court. In para 10, the Reference Court has made the following observations by quoting the same as law laid down by the Hon'ble Apex Court and various High Courts :-

"10. Enhancement cannot be taken as a matter of charity. At the same time, it must be borne in mind (keeping in mind the observations of the Apex Court as well as various High Courts) that "to grant enhancement is a rule and to reject it is the exception."

8. The above quoted observations are totally incorrect. Neither the Hon'ble Apex Court nor any High Court has laid down such law in any of its pronouncement. In view of

above, I am of the view, the applications deserve to be allowed. Accordingly, the applications are allowed. Delay condoned. Appeals be registered subject to removal of office objections, if any.

9. Civil Applications are disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

SGA